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No. 419

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

ROLAND E. BARNES, *Petitioner,*

v.

ABRAHAM S. SIND AND ISRAEL COHEN, ET AL.,
Respondents.

REPLY MEMORANDUM FOR PETITIONER

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The Opposition is noteworthy for its failure even to attempt a denial or an explanation of the racially discriminatory purpose of the sellers' conduct throughout this case. Nor do Respondents dispute the racially discriminatory effect of the judicial action herein, which denies to the single Negro purchaser what all of the sellers' white buyers freely received. Instead, all that Respondents say to the serious constitutional issue presented by this admitted racial purpose and effect is that the District Court's jurisdiction was invoked "on the basis of diversity of citizenship and no question of federal law was claimed to be involved" (Opp. p. 2). But there was no occasion for pleading any constitutional issue at the time the case was first commenced, since the constitutional issue arose—as in *Shelley*—from the subsequent action of the courts below. Nor, as demonstrated in the Petition (pp. 10-12), is it an answer to the constitutional wrong—any more than

in *Shelley*—to argue that the lower court has correctly applied substantive property law in a manner which enforces racial discrimination.

Actually, however, no more than the majority below do Respondents justify the substantive ruling under Maryland law. The Maryland cases cited hold only that a purchaser from a husband cannot reduce the stated purchase price because of an outstanding dower right. By contrast, Petitioner here has from the first tendered and affirmed his willingness to pay the full purchase price; it is the *sellers* who want exoneration, because of a possible dower interest, from their express covenant to give a warranted title. That exoneration Maryland law does not provide; as stated in the dissent below by the former Chief Judge of the Maryland Court of Appeals, Dr. Barnes "was not seeking a reduction in the purchase price; rather the defendants unjustly endeavored to give him less than they had agreed" (Petition, p. 24). Respondents' claim that in that dissenting opinion by Judge Sobeloff "no consideration was given . . . to applicable Maryland law," hardly does justice to the competence of the only Maryland member of the Fourth Circuit. Since the refusal to afford Dr. Barnes the warranted title promised him by Respondents has nowhere been justified, and is manifestly arbitrary and erroneous, we respectfully suggest that the appropriate disposition is a summary reversal upon the grounds set forth in Judge Sobeloff's dissenting opinion.

Respectfully submitted,

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END